

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8044 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No.

2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge? No.

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SHARDAGURI VASANTRAI SHETH

Versus

STATE OF GUJARAT

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Appearance:

MR AJ SHASTRI for Petitioner.

MR. DN PATEL, A.G.P., Respondents.

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CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 02/11/96

ORAL JUDGEMENT

Rule. Mr. D.N. Patel, learned A.G.P. waives service of rule on behalf of the respondents.

2. The petitioner hereinabove calls in question

legality and propriety of the order passed by the competent authority on 4-11-1984 declaring 382-78 sq.mtr. of land in excess of ceiling limit under the Urban Land Ceiling Act, 1976.

3. According to the petitioner after the Act came into force he filled up necessary form declaring his holdings. The Competent Authority at the time of computing his holding pertaining to ceiling limit did not consider 4 (four) units mentioned in para 2 of the petition. The family members namely, Bharatiben, Shailaben, Rajeshbhai and Pareshbhai were major on the day when the Act came into force. Each of them being separate unit was entitled to retain the land to the extent of Rs.1,500/- sq. mtr. All these four units ought to have been considered, but the competent authority inadvertently and erroneously did not take the same into consideration and passed the wrong order.

4. On behalf of the State Government Mr. D.N. Patel, learned A.G.P. is not able to point out anything justifying the order passed by the competent authority.

5. It is clear from the materials on record before me that Bharatiben was born on 24-7-1950, Shailaben on 25-11-1952, Rajeshbhai 16-1-1955 and Pareshbhai on 3-6-1957, and such birth dates show that on the day when the Act came into force all the four family members were major, but their claim or right to retain the land is ignored. The computation made by the competent authority is therefore erroneous and the same is required to be corrected. On other count also the order is assailed. The order of the competent authority so far it relates to land bearing Survey No. 31 and 32 of village Nanamuva being the agricultural and at present used as such is erroneous and cannot be maintained.

5. In view of the matter, the petition is partly allowed and the order of the competent authority passed on 4-11-1984 the copy of which is produced at Annexure-C and consequent order of the Urban Land Tribunal, Ahmedabad passed on 10-10-1988 the copy of which is produced at Annexure-D are quashed and set aside so far as the same it relate to the land Survey Nos. 31 and 32 situated within local limits of village Nanamuva. The Form is referred back to the competent authority to consider afresh, keeping in mind the above stated four units and make computation again qua Survey Nos. 31 and 32 and pass appropriate order after hearing the petitioner and also undergoing necessary formalities filling up other forms. Each of four family members

mentioned in para 2 of the petition shall also fill up the form. The competent authority shall decide the application as directed hereinabove at the earliest. No order as to costs in the circumstances of the case. Rule is made absolute to the aforesaid extent.

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